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"WHAT MOTIVE FOR TELLING THE TRUTH CAN ANY MAN POSSIBLY HAVE WHEN HE IS AT THE POINT OF DEATH?"

The caption for our editorial was a remark, as reported by Mr. Justice Stephen in his History of the Criminal Law of England and therein attributed to a native of Madras. It is recited in connection therewith that "In the Punjab the effect of the rule of admission of dying declarations in a murder trial is that a person mortally wounded frequently makes a statement bringing all his hereditary enemies on the scene at the time of his receiving his wound, thus using his last opportunity to do them an injury."

New York Court of Appeals uses what we have stated above "to show that the admission of dying declarations even to the extent to which they are now received is not universally approved; and the courts should be cautious lest they enlarge the rule by judicial construction." People v. Becker, 108 N. E.

We have little fault to find with the New York court for its affirmance of the ruling of the trial court excluding the offered statement by one of the gunmen about to be executed for murder of Rosenthal, for which murder Becker was also afterwards convicted on a second trial. The statement was that Becker had nothing to do with that murder. The trial court ruled that in New York the question was not open under decision confining dying declarations to those made by the victim before he died, and the higher court would have done better by simply affirming this declaration.

We are unwilling, however, to think that such effect of the rule of admissibility of dying declarations as is stated to exist in the Punjab or such a question as the native of Madras put should be cited to show, that this rule of common law does not receive universal approval, or should be referred by a court following it as a reason for caution against its enlargement.

On the contrary, we think that the differing view in such a civilization as that of Madras or in the Punjab tends to emphasize the moral sanctions in the common law which support the exception in favor of dying declarations. Those sanctions would put the question the native of Madras asked in this way: "What motive for telling an untruth can any man possibly have when he is at the point of death?"

The question in this form appeals to the ready consciousness of every man who thinks as our forefathers did, from whom we inherited our common law. If there has come a change in our feelings or our morality or view of responsibility after death for injustices in this life, it is far from being of that general character so as to change the old rule. Our Christian history repudiates the acknowledgment of any such change.

Whether we regard this as a Christian nation or not, if we are going to abolish a common law rule that had its rise in Christian morality, we must show that conditions have vastly changed. Who will pretend to say they have in this regard?

It must be conceded that courts have hedged the rule about with many difficulties, and often, we lament to say, they seem to have forgotten, that it is founded on moral principle—on the presumption of circumstances having the compelling force to produce truth. They have seemed to regard it as merely an exception in a law, with no moral basis back of it, rather than as a declaration of a great truth having its root in a morality the foundation of our common law administrative justice.

Losing sight of the real reason of the exception, they have treated it in a cheeseparing way, dwelling on the opportunity of

cross-examination being denied to an accused. If they had considered that it operates in the way of an estoppel against such an objection they would have omitted this argument. And had the principle of the circumstances compelling truth been heeded, they might have extended it so as not to be entirely one-sided and against those on trial for their lives.

Mr. Justice Holmes, in a dissent concurred in by Mr. Justice Lurton and Mr. Justice Hughes, says: "The rules of evidence in the main are based on experience, logic and common sense, less hampered by history than some parts of the substantive law. There is no decision by this court against the admissibility of such a confession (by a third person); the English cases since the separation of the two countries do not bind us; no other statement is so much against interest as a confession of murder; it is far more calculated to convince than dying declarations which would be let in to hang a man." Donnelly v. United States, 228 U. S. 243, 278.

The mercy of our law in requiring that one must be convicted of crime beyond a reasonable doubt and that no jury in any case shall be instructed with a hint of belief in the guilt of an accused, seems to us to be opposed by a rule of evidence that denies hearing by a jury of a confession "far more calculated to convince than dying declarations."

Mr. Wigmore, referring to our rulings against confessions by third persons of guilt says: "It is not too late to retrace our steps and to discard this barbarous doctrine, which would refuse to let an innocent accused vindicate himself even by producing to the tribunal a perfectly authenticated written confession, made on the very gallows, by the true culprit now beyond the reach of justice." 2 Wigmore on Ev., § 1477.

In 4 Chamberlayne's Modern Law of Evidence, 2859, the author speaks of the rule of dying declarations as a "discredited rule," greatly because of "the administrative treatment judicially accorded to" it, and he argues that: "If it is fit to be trusted at all, it should be trusted less grudgingly." This he attributes to the "serious modern doubt as to the actual absence of a controlling motive to misrepresent" on the part of a declarant. He says: "Taking men as they are at present, the world as it is, are the guarantees for truth-telling in case of dying declarations to be placed quite so high as early administration was inclined to rate them?"

We would say "yes and higher," but if some among us think otherwise, they would not so much represent a changed civilization as they would individual views, inducing judges to attempt to refine it out of existence. But, if dying declarations are "cribbed, cabined and confined," for fear of injustice being done an accused, how much more greatly is injustice done him by denying the right to introduce a written confession by one who, like a declarant in a dying declaration, has passed away where no process can reach him or punishment terrorize from speaking the truth. That one will speak the truth, when no opposing motive hinders, is the very basis of our civilization. This is implied when we appeal to witnesses who even may have a motive to distort, and we render judgment on their testimony. Instructions to juries constantly advise them to weigh testimony by consideration of the interest a witness has or not and the circumstances under which he testifies, and for duress solemn declarations and contracts are disregarded.

Our jurisprudence being founded on the theory, that there is an inclination to tell the truth when authoritatively called upon to speak in regard to a matter, this implies that we will say nothing false to another's injury under guise of truth. And when we admit a child's testimony only after he shows consciousness of moral responsibility, we cannot acknowledge any force to the question in our caption. Justice is wholly unattainable where there is no moral sense.

NOTES OF IMPORTANT DECISIONS

COPYRIGHT—PERFORMANCE OF MUSICAL COMPOSITION FOR PROFIT.—By copyright statute of 1909, there is given to the proprietor of a copyrighted musical composition the exclusive right of its performance in public for profit. A coin-operated machine for its rendition is not prohibited unless a fee is charged for admission to the place where it is operated. Willful infringement to be criminal does not embrace performance by church choirs, choruses in public schools or vocal societies where the copyrighted publication is obtained from a public library, etc., and the performance is given for charitable or educational purposes and not for profit.

In John Church Co. v. Hilliard Hotel Co., 221 Fed. 229, suit for injunction and infringement was brought against a hotel company for performances of a copyrighted musical composition in its dining-room. This case, as decided by Second Circuit Court of Appeals, held that as no admission fee was charged, the performance was not for profit and there was no violation of the plaintiff's exclusive rights.

The court arrives at this conclusion from an entire view of the act, saying that: "If complainant's construction is right, then a church in which a copyrighted anthem is played is liable, together with the organist and every member of the choir." Here the court seems to forget that the statute specifically excepts church choirs and the exception under certain conditions helps to enforce contrary construction to that drawn by the court. The conditions of exemption of a church choir are cumulative and not several and all conditions must be present.

We think this view is enforced when we consider the measure of recovery by the copyright proprietor of a musical composition to-wit: Ten dollars for every infringing performance. This carries the idea that everywhere except in rendition of a musical composition by coin operated machines where no fee is charged for attendance, performance is public and violative of exclusive rights. In no other way is it possible for us to discern out of what are the exceptions in the statute carved.

INTERSTATE COMMERCE — WEBB-KENYON LAW AS AFFECTED BY STATE LIQUOR LAWS.—In Adams Express Co. v. Kentucky, 35 Sup. Ct. —, the U. S. Supreme Court demonstrates very clearly that the Webb-Kenyon act does nothing more than divest intoxicating liquor of its interstate character according to the tenor of state laws, whose enforcement it is designed to aid.

A Kentucky statute was construed by its Court of Appeals as not aimed at the purchase of liquor whenever lawful to sell it for one's personal use and therefore the Supreme Court held that it was no violation of a Kentucky statute for an express company to deliver to purchasers in local option territory liquor not intended to be sold in violation of law, but solely for the personal use of consignees.

The court says: "It therefore follows that inasmuch as the facts of this case show that the liquor was not to be used in violation of the laws of the state of Kentucky, as such laws are construed by the highest court of that state, the Webb-Kenyon law has no application and no effect to change the general rule that the states may not regulate commerce wholly interstate."

It seemed to be quite convenient for the Supreme Court to adopt state construction of its own statutes, because most likely it agreed with it, yet it is to be noticed that the state court held that it was not competent for the legislature "to prohibit the citizen the right of owning or drinking liquor when in so doing he did not offend the laws of decency by being intoxicated in public." Could it, however, control possession by individuals when such possession was deemed by the legislature to contribute to a violation of the laws of decency in encouraging intoxication in public? The sale of poison for a citizen's own use may be forbidden. May a state place liquor in some like category?

DAMAGES—ENGAGEMENT OF WIDOW TO BE MARRIED AS ADMISSIBLE EVIDENCE IN REDUCTION OF DAMAGES.—By Louisiana statute in an action for death the recovery is apportioned as directed by the verdict between widow and children, defining the portion going to each child. In Jones v. K. C. & So. Ry. Co., 68 So. 401, Supreme Court of Louisiana, the verdict read so much for the widow, and varying amounts for each child increasing in amount to the youngest child. On cross-examination of the widow she was asked whether or not she was engaged to be married and upon objection the question was ruled out.

The majority of the court affirming this ruling, said: "The evidence intended to be elicited was in our opinion admissible to show that the plaintiff might not be deprived of the support of a husband during the remainder of her life. But it is not probable that an answer to the

question would have affected the verdict. We assume that the jury considered the widow's prospect of marrying again."

In the opinion denying rehearing the court, being pressed upon what it said as to its assumption of what the jury considered as to her "prospect of marrying again," changed its ground by ruling that such proof was irrelevant and say "non constat that the engagement would result in marriage, and if it should so result, non constat that the condition of plaintiff will thereby be bettered."

We think a simpler and more conclusive answer would be that remarriage even with proof of the widow's condition being bettered than were she to remain single, would not affect the measure of recovery. To say otherwise would make the law discourage matrimony, and matters purely collateral afterward should not change defendant's obligation at an anterior date.

THE MISSOURI IDEA OF SUPPRESSING THE UNLAWFUL PRACTICE OF LAW.

Not an inconsiderable interest has been taken by members of the bar in other states in the so-called drastic statutes recently passed by the Missouri Legislature dealing with the unlawful practice of the law, for which reason we have thought it proper at this time to explain in detail the purpose and effect of this new legislation.

The laws so passed were incorporated in three bills, one of them being a "rider," tacked on as an amendment to the new Banking Act. These laws went into effect June 19, 1915, and it is understood that the St. Louis and the Kansas City Bar Associations will have soon or have already appointed committees to inquire into the extent of their operation and how far there may be need for their immediate enforcement.

Unlawful Practice of the Law Act.—The first Act to be considered was one defining the "practice of the law" and the term "law business."[1] Section 1 of this Act provides as follows:

"The 'practice of the law' is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleading or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.

"The 'law business' is hereby defined to be and is the advising or counseling for a valuable consideration of any person, firm, association or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever."

So far as the first half of this section defines the practice of law as being the appearance of one as an advocate or in a representative capacity or the drawing of papers, pleading and other documents for use in any court of record, it does not change the law as it heretofore existed in Missouri or in any other state. But advanced ground is taken when this exclusive privilege is extended to practice before "any body, board, committee or commission, constituted by law or having authority to settle controversies." Such provision at least dispels whatever doubts may have existed as to the character of such "practice," and prevents any but licensed attorneys from appearing in a representative capacity before city or state boards or arbitration or public service commissions and other quasi-judicial bodies.

The second half of this section defining the term "law business" is regarded as

(1) Missouri Sessions Acts (1915) p. 99.

making a more drastic change at least in local custom if not in the law. Heretofore it has been the prevailing practice for real estate agents, notaries, trust company clerks and others to draw wills, deeds and other legal documents, for which the usual fee has been five dollars in simple cases, although larger fees have been charged in more difficult cases. Many of such deeds and documents, drawn by laymen, while in form unobjectionable, have not infrequently been found to be defective when essaying fully to cover or protect substantial rights of the parties concerned, such defects being due, no doubt, to the fact that the conveyancer's knowledge of the law was usually limited to the most elementary principles and to matters of mere form.

Objection has been made to this section by those who have heretofore profited from this branch of the practice of the law, that it was passed solely in the interest of lawyers. The fact is that the great majority of the lawyers of the state took very little interest in this legislation. Indeed, it may be questioned whether the lawyer's business has not been helped heretofore rather than injured by such incompetent intermeddling by laymen in the technical application of the principles of law even to such apparently simple legal forms as deeds and wills.

There can be no doubt, however, that, unless such legislation can be justified as being in the interest of the public welfare, it would come perilously near the brink of being regarded as class legislation. But if the drawing of a deed or will may reasonably be thought to demand the special skill of one trained in the law, the legislature may very properly be regarded as acting within the police power of the state when it includes the drafting of such conveyances as being included in the term "law business."

The question of "legal advice," as coming within the definition of legal business, will not greatly affect the situation, since the law is limited to such advice as is given "for a valuable consideration." It is well known that laymen have almost invariably used the "free advice" inducement to secure business they would otherwise have been unable to obtain.

Just how far this provision as to legal advice, however, will affect trust companies, who give free advice with respect to the drawing of wills in return for being named as executor therein, is not clear. And that question is also being raised by collection agencies, and credit men's adjustment bureaus, with regard to such advice as they are accustomed to give in return for being appointed creditor's representatives in bankruptcy proceedings or in return for other valuable though indirect consideration. It would be difficult to see how such organizations could escape its provisions, on a purely philanthropic basis, and such advice as they do volunteer is usually given with the understanding or the expectation of receiving a financial return therefrom. And even the collection of accounts on a commission basis would seem to fall within the extraordinarily inclusive provisions respecting "the doing of any act for a valuable consideration," or securing for any person "any property rights whatsoever." If there is any possible kind of "law business" which a layman can do in Missouri for a "valuable consideration" it is difficult to imagine what it could be.

Penalties for Practicing Law Without a License.—Section 2 of this same Act defines the persons who shall engage in the "practice of law" or who may "do law business." The section provides as follows:

"No person shall engage in the 'practice of law' or do 'law business,' as defined in Section 1 hereof, or both, unless he shall have been duly licensed therefor and while his license therefor is in full force and effect, nor shall any association or corporation engage in the 'practice of law' or do 'law business' as defined in Section 1 hereof, or both. Any person, association or corporation who shall violate the foregoing prohibition of this section shall be guilty

of a misdemeanor and upon conviction therefor shall be punished by a fine not exceeding one hundred dollars and costs of prosecution and shall be subject to treble the amount which shall have been paid him or it for any service rendered in violation hereof by the person, firm, association or corporation paying the same within two years from the date the same shall have been paid and if within said time such person, firm, association or corporation shall neglect and fail to sue for or recover such treble amount, then the State of Missouri shall have the right to and shall sue for such treble amount and recover the same and upon the recovery thereof such treble amount shall be paid into the treasury of the State of Missouri. It is hereby made the duty of the attorney-general of any county or city in which service of process may be had upon the person, firm, association or corporation liable hereunder, to institute all suits necessary for the recovery by the State of Missouri of such amounts in the name and on behalf of the state."

The exclusion of corporations from the practice of law has already been adjudicated in several recent and important decisions in New York, to some of which we have adverted in recent articles in this journal.[2] This section of the Missouri Unlawful Practice Act now determines that question for that state. A corporation is clearly incompetent to engage in the work of any profession the practice of which is attended with such peculiar personal responsibilities and which require such moral and intellectual qualifications as does the profession of the law. In Missouri at least the practice of law is freed from the danger alleged to be impending in some of the larger commercial centers, of being monopolized by big corporations.

The penalty imposed by this section is three-fold and exceedingly effective. In the first place the violation of the act constitutes a misdemeanor punishable by a fine of one hundred dollars. Secondly, any person, association or corporation, violating the provisions of the Act shall be liable, in a civil suit, to be brought by the "client," to pay a penalty three times the amount received for such "legal services" for which a charge has been made. Thirdly, if the so-called "client" fails to bring such suit, the attorney-general is required to bring such suit, and the amount recovered in such suit shall be paid into the treasury of the State of Missouri. With a watchful bar association committee, careful to detect violations of the law, it would be impossible for unqualified and unlicensed individuals or corporations to hereafter make merchandise of the law and trick the public into arrangements which can but result in great financial loss and disappointment and resulting contempt for the law and its administration.

Division of Fees Between Lawyers and Laymen.—Section 3 of this same Act refers to the division of fees by lawyers with laymen. This section provides as follows:

"It shall be unlawful for any licensed attorney in the State of Missouri to divide any fees or compensation received by him in the 'practice of law' or in doing 'law business' with any person not a licensed attorney or any firm not wholly composed of licensed attorneys, or any association or corporation, and any person, firm, association or corporation violating this section shall be deemed guilty of a misdemeanor and upon conviction therefor shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars and costs of prosecution, which fine shall be paid into the treasury of the State of Missouri. Any person, firm, association or corporation who shall violate the foregoing prohibition of this section shall be subject to be sued for treble the amount of any and all sums of money paid in violation hereof by the person, persons, association or corporation paying the fees or compensation which shall have been so divided and if such person, persons, association or corporation shall not sue for, or recover the same within two years from the date of such division of fees or compensation, the State of Missouri shall have the right to and shall sue for and recover said treble amount, which shall, upon recovery be paid into the treasury of the State of Missouri. It is hereby made the duty of the attorney-general of the State of Missouri or the prosecuting attorney of any county or city in which service of process may be had upon the per-

(2) 71 Cent. L. J. 239; 80 Cent. L. J. 404.

son, firm, association or corporation liable therefor, to institute all suits necessary for the recovery of said sums of money by the State of Missouri."

This section hardly declares any new rule of law, as it has already been held to be the law that laymen are not entitled to share in the emoluments of the practice of law and may not recover on such contracts.[3] The section is important, however, as making the penalty more severe, and the enforcement of the law for that reason more effective. The penalties imposed are similar to those imposed for the violation of Section 2. Furthermore, this section is important also as making it possible for bar associations to reach that class of unethical practitioners who employ "runners" or receive business through contracts made with hospital physicians, internes, police officers and others, whereby such persons, not being lawyers, receive a percentage of the fees to be recovered in suits which are thus brought into the lawyer's office.

(3) See Alpers v. Hunt, 86 Cal. 78, 24 Pac. 846, 21 Am. St. Rep. 17, 19 L. R. A. 483; Langdon v. Conlin (Neb.) 93 N. W. 388; Burt v. Place, 6 Cowan (N. Y.) 431; Munday v. Whisenhunt, 90 N. C. 458; Lyon v. Hussey, 82 Hun. 15. In the case of Langdon v. Conlin, supra, the Supreme Court of Nebraska held that a contract between an attorney at law and one who is not such an attorney, by which the latter agrees to procure the employment of the former by third persons for the prosecution of suits in courts of record, and also to assist in looking after and procuring witnesses whose testimony is to be used in the cases, in consideration of a share of the fees which the attorney shall receive for his services, is against public policy and void. In rendering its decision the court voiced the following sentiments: "It is apparent that it is the policy of the legislature to fix a high standard of professional ethics to govern the conduct of attorneys in their relations with clients and courts, and to protect litigants and courts of justice from the imposition of shysters, charlatans, and mountebanks. It seems to us that the contract in issue is but a thinly veiled subterfuge by which the plaintiff, who, it is conceded, was not a member of the bar, and who had never complied with any of the provisions of chapter seven, for the purpose of authorizing him to engage in the practice of law, undertook to break into the conduct of proceedings of a court of record, to which he was not a party, by attempting to form a limited and silent partnership with one who had complied with the provisions of the law and was entitled to the emoluments of the profession."

Act Prohibiting Trust Companies from Acting as Executors of Wills Drawn by Salaried Employes.—Another law tacked on as an amendment to the "Banking Act" deals with the restrictions imposed upon trust companies prohibiting such companies from acting as executor under any will drawn by any salaried employe of such company. The amendment, as originally drawn, was unnecessarily severe and made void any will drawn under the direction of any trust company. Representatives of such corporations, however, made such vigorous protests to the legislature that the provision, as at first drawn, was greatly modified, but the resultant action is still regarded as being amply sufficient to curb the too far-reaching activities of these great aggregations of capital whose services, while useful to the public when confined to strictly trustee business, have been extended and advertised to include such a personal and professional service as drawing a will, in a manner at once dangerous and offensive, from the public standpoint. This section[4] provides as follows:

"When any corporation shall have been named as executor in any will hereafter executed, and shall have qualified as such the presumption shall be that such will was not prepared by a salaried employe of said corporation; but upon the application of any heir, devisee or legatee, made in the probate court of the county for the removal of such executor said presumption may be rebutted by evidence satisfactory to the court hearing such application, unless said will or some codicil or certificate attached thereto shall contain a recital that at or before the execution of said will, the testator had advice or counsel in relation thereto from someone not under salary from said corporation. In the absence of such recital, the court may on such application and upon satisfactory evidence that said will was prepared by a salaried employe of said corporation, revoke the appointment of, and remove such corporation as such executor."

The purpose of this section is to release those, having wills to be drawn, from the

(4) Missouri Sessions Acts (1915) Sec. 132, p. 170.

dominating influence and seductive inducements of trust company officials, and to secure for the man, wishing to dispose of his estate, the benefit of independent and competent advice. The importance of this section, from the standpoint of public policy, will the more readily appear from a careful study of banking conditions as brought out by the Congressional Inquiry into the so-called Money Trust. While trust companies undoubtedly meet a great public need, it is not an unimportant public safeguard to require that wills, transferring once every twenty-five years at least one-half of the property of every community, should be prepared under conditions which are free from the influence of those having any interest in controlling the money supply and financial assets of the state and nation.

This section is quite conservative in its operation, and yet strong enough to deter any trust company from undertaking the risk of permitting wills to be drawn by "salaried employes" in cases where they are likely to be named as executor. It is not likely that the recital in the will that the testator has had the benefit of independent legal advice, which practically makes the will incontestable on this ground, will be of as much of an advantage to the trust companies as some may be inclined to believe, since it is not conceivable that testators would readily agree to declare an untruth in such a document as a last will and testament or wish to endanger the disposition of their property by any subterfuge from which no direct advantage is to be derived.

Practice in the Probate Court.—The third act of legislation is in the form of a bill to restrict practice in the probate courts to regular licensed practitioners. This act[5] provides as follows:

"No person whomsoever shall practice in the probate court, it being a court of record, other than a regular, licensed, practicing and reputable attorney, so authorized in this state; and no person shall receive any pay nor compensation for any legal service, for making settlements, annual or final, filing petitions or other documents in any estate, other than such regularly licensed attorney, and no probate court shall allow nor permit any pay or fee for any such services to any person, to be taxed, in any estate, other than to a reputable attorney, either directly or indirectly, for any purpose. Nor shall an administrator or executor or guardian employ or pay to any such person other than an attorney. The probate court shall not allow any unreasonable, excessive or unjust fee or compensation to be taxed to any attorney, in any estate, and in no case shall such court allow any fee whatever when the work, service or advice done or performed or given by any attorney is wrong, improper or injurious to the estate. Any person whomsoever practicing, charging or receiving fees in the probate court without being an attorney as herein required, shall be guilty of a misdemeanor and upon a conviction shall be punished by a fine of not less than $10.00 nor more than $100.00, or by imprisonment not to exceed thirty days in the county jail or by both such fine and imprisonment: *Provided,* nothing in this section shall be so construed as to prevent any executor, administrator or guardian from making their own settlements and management of their estates if in the opinion of the court entered of record such persons are capable of so doing and the estate will not be injured thereby but be legally and properly administered."

To some members of the bar this act was considered as being unnecessary, from a strictly legal point of view, since the probate court being a court of record, no one but licensed practitioners should be regarded as having a right to practice there. But local conditions made the Act necessary, since by custom of many years' standing, laymen had been permitted to practice in such courts, as in justice and police courts. Some humorous allusions have been made to the use of the descriptive term "reputable" as applied to attorneys allowed to practice in the probate court, and the question has been raised whether the probate judge shall hereafter determine the quality of the reputations of members of the bar practicing in such courts. It is probable that the word "reputable" is used in this

(5) Missouri Sessions Acts (1915) p. 265.

section as meaning nothing more than the term "in good standing" as usually applied to attorneys practicing in the circuit courts.

These far-reaching provisions regulating the practice of law and restricting the "practice of the law" and the doing of "law business" to those licensed by the state as being competent to transact such business will be regarded by students of sociological jurisprudence as being only a further evidence of the growing tendency of society to protect itself from fraud and incompetency on the part of those who hold themselves out as being skillful in the practice of the various trades and professions and viewed in this light are to be regarded as a very proper exercise of the police power of the state and not as being in the interest of any trade or profession.

ALEXANDER H. ROBBINS.

St. Louis, Mo.

ATTORNEY AND CLIENT — CHAMPERTY AND MAINTENANCE.

JOHNSON ET AL. v. GREAT NORTHERN RY. CO.

Supreme Court of Minnesota. Feb. 5, 1915.

151 N. W. 125.

(Syllabus by the Court.)

It is not against public policy as champerty or maintenance, for an attorney to solicit business, or to advance money to a poor client for his living expenses during litigation, or to advise a client against the settlement of his case.

Action by Christ Johnson against the Great Northern Railway Company, wherein John I. Davis and Davis & Michel, employed as attorneys for plaintiff on a contingent fee, petitioned for judgment against defendant, which had settled with plaintiff without the knowledge or consent of his attorneys. Judgment ordered for petitioners and defendant appeals. Affirmed.

BUNN, J. John I. Davis and Davis & Michel were the attorneys for Christ Johnson in an action brought by him against defendant to recover for personal injuries. Before the case came to trial, defendant settled with Johnson without the knowledge or consent of his attorneys. The terms of the settlement were these: Defendant agreed to pay Johnson $4,500 in cash, to reimburse him for any sum he should be compelled to pay his attorneys, to pay all hospital and doctor's bills, and to furnish him free with an artificial leg when he was in condition to use one. The $4,500 was paid to Johnson, and the suit and cause of action compromised and settled.

The attorneys were employed by Johnson under a contingent fee contract, by the terms of which they were to receive for their services 33⅓ per cent of any amount recovered by settlement or suit. The contract provided that any moneys advanced by the attorneys for expenses were to be deducted from the gross amount received by settlement or suit. It also provided that no settlement was to be made without the consent of Johnson.

This proceeding was by a complaint or petition filed by the attorneys, and was entitled in the main action. The petition set forth in detail the contract between Johnson and the petitioners, the commencement of the personal injury action, the settlement thereof, and its terms. Fraud was also alleged. Judgment against defendant for $2,000 and interest was demanded. Defendant filed an answer to the petition which, after admitting the commencement of the action and settlement, proceeded to allege that petitioners solicited the claim of Johnson, wrongfully persuaded him not to make an amicable settlement, by promising to obtain a recovery largely in excess of compensation, to advance large sums for his living expenses, and to pay all costs and expenses of the litigation, and to reimburse themselves solely out of the amount recovered from defendant. It was alleged that, had it not been for these representations and promises, the claim would have been amicably settled without suit for substantially the amount actually paid; that the unlawful conduct of petitioners "in this case and in the whole course of unlawful conduct of the petitioners in soliciting and obtaining personal injury cases against this defendant and other corporations has resulted in constant, needless strife and contention between this defendant and its employés and other claimants, in unnecessary and speculative litigation much to the detriment of this defendant and greatly to the prejudice of justice." In conclusion, the answer alleged that, by reason of the unlawful and champertous conduct of petitioners, they have no lien upon the cause of action settled by defendant, and further that their contract with Johnson was null and void, for champerty and

maintenance and as against public policy. The reply was a general denial.

The court, on petitioners' motion, made an order vacating the settlement for the purpose of hearing and determining what fees should be paid by defendant to the attorneys for plaintiff. This matter was heard by the trial court without a jury. After petitioners established their contract with Johnson, the fact of the settlement, and that they had received no compensation, defendant called each of the petitioners for cross-examination, and attempted to prove by him the allegations of its answer. The court sustained objections to practically all questions asked and to numerous offers to prove the facts alleged, and the case was submitted for decision with no evidence in support of the defense. The court subsequently filed its decision finding the facts in favor of petitioner, and that the "other allegations" of the pleadings were untrue, and ordering judgment in favor of the petitioners and against defendant for $2,000 and interest.

The questions involved are these: (1) Did the court err in excluding the evidence offered by defendant in support of allegations of its answer? (2) Did it err as to the amount petitioners are entitled to recover?

(1) 1. As to the ruling in sustaining objections to questions and offer relating to the conduct of petitioners in general, and in other cases, it is clear that these matters were wholly irrelevant to the issue—petitioners' right to a lien in this particular case.

The facts offered to be proved that related to petitioners' conduct in the Johnson case were substantially these: (1) That they solicited Johnson's case; (2) that they paid money to Johnson for his support during the pendency of the litigation; (3) that they advised him not to settle the case.

Is conduct of this kind so against public policy that the courts will deny to attorneys guilty of it their statutory lien on the client's cause of action? We freely concede that champerty or maintenance in a case may be ground for refusing the aid of the court in compelling compensation to the guilty attorneys. But is it champerty or maintenance or against public policy for an attorney to solicit business, to pay money to a poor client for his living expenses during the litigation, or to advise him against a settlement? We have our individual opinions on these propositions as questions of good taste or legal ethics. But in the absence of some statute we are unable to hold that it is illegal or against public policy for an attorney to solicit a case. See concurring opinion of Justice Canty in Gammons v. Johnson, 76 Minn. 76, 78 N. W. 1035. The practice of advancing money to the injured client with which to pay living expenses or hospital bills during the pendency of the case and while he is unable to earn anything may, in a sense, tend to foment litigation by preventing a settlement from necessity; but we are aware of no authority holding that it is against public policy, or of any sound reason why it should be so considered.

It is generally held that a person, whether an attorney or a layman, who furnishes assistance by money or otherwise to a poor man to enable him to carry on an action, is not guilty of maintenance. 6 Cyc, 865, and cases cited; N. W. S. S. Co. v. Cochran, 191 Fed. 146, 111 C. C. A. 626. It is not against public policy for an attorney to loan his client money to enable him to carry on the suit. This is the utmost extent to which the offer of evidence went, and it was not error to sustain the objection.

As to the offer to prove that the petitioners advised Johnson against settling the case, representing that he was entitled to heavy damages, we know of no reason why this should be held contrary to public policy. Johnson did not agree not to make a settlement without the consent of his attorneys; indeed, the contract expressly provides that the attorneys shall not settle without his consent. The law favors the amicable settlement of controversies, and it is wrong for a lawyer to discourage settlements out of personal motives. But there was no offer to prove any such conduct in this case; indeed, the evidence shows pretty clearly that the petitioners advised and attempted to secure a settlement.

(2) 2. Defendants argue that an agreement by an attorney to pay the expenses of litigation and reimburse himself from the proceeds of the action is void. But the contract in this case only provided that the attorneys might retain out of the amount recovered any moneys advanced for expenses. There was no offer to show an oral agreement that the attorneys were to support the litigation at their own expense or to indemnify the client against costs. The argument therefore fails, and the cases cited have no application. As before stated, an agreement to loan the client funds with which to carry on the suit or to maintain himself during its pendency is not regarded as per se opposed to public policy. It is only when the attorneys are to ultimately stand the costs, or when the client is indemnified from liability for them in case of no recovery, that the law declares the arrangement void. Huber v. Johnson, 68 Minn.

74, 70 N. W. 806, 64 Am. St. Rep. 456; 6 Cyc. 858, 865, and cases cited.

After a careful reading of the record, we find nothing in the evidence excluded that was material—nothing that would have justified the trial court in refusing relief to petitioners. Nothing can be added to what has been said in prior decisions of this court on the subject of champerty and maintenance. Huber v. Johnson, 68 Minn. 74, 70 N. W. 806, 64 Am. St. Rep. 452; Gammons v. Johnson, 69 Minn. 488, 72 N. W. 563; Id., 76 Minn. 76, 78 N. W. 1035; Gammons v. Gulbranson, 78 Minn. 21, 80 N. W. 779; Holland v. Sheehan, 108 Minn. 362, 122 N. W. 1, 23 L. R. A. (N. S.) 510, 17 Ann. Cas. 687. These cases in no way touch the case at bar. There was no illegality in the written contract between Johnson and the petitioners, and no offer to prove any facts that would have made the contract illegal as against public policy.

Order affirmed.

NOTE.—*Champerty in an Attorney Agreeing to Pay Expenses of Litigation and be Repaid Out of Recovery.*—The syllabus in the instant case seems not to go as far as it was necessary for the court to go to sustain plaintiff's case. Thus we see that it was asserted that the agreement was for the attorney "to pay the expenses of the litigation and reimburse himself from the proceeds of the action." The reasoning by the court does not seem to fully meet this question and yet it fails to say it was not involved.

In re Evans, 22 Utah 366, 62 Pac. 13, 53 L. R. A. 952, 83 Am. St. Rep. 794, it was said: "While it is permissible for a near kinsman of a poor suitor out of charity to assist him in the maintenance of his suit, such kinsman cannot do so as a speculative venture, based upon an agreement to share in the proceeds of the litigation in case the suitor should recover. Both the law of maintenance and champerty forbid the meddling by any person, not a party to the suit, whatever may be his relation to the suitor, for the purpose of speculation or profit."

It is familiar that what the law forbids the doing of directly, it discountenances the doing of indirectly. If there is speculation in the advancing of money for the expense of litigation, it is the speculation that is denounced, and it is as harmful when this is merely to subserve one purpose or another purpose. If it is for an attorney to secure recovery so his contingent fee may be paid, why is this not as much a champertous contract, as if it provided for a larger fee conditioned on his advancing such expenses?

In Taylor v. Perkins, Mo. App., 157 S. W. 122, the question of relationship to a poor suitor is considered in the same way as in the Evans case, *supra*, and it was said that: "The right of an attorney to aid and assist his client by making advances for him, expecting to be reimbursed by the client is proper enough and should not be confounded with the evil of champerty and maintenance," but this is not saying he may make such advances upon the expectation of recovery out of proceeds and not otherwise.

In Grace v. Floyd, Miss., 61 So. 694, the facts show recovery of judgment in lower court and an appeal taken by defendant. There was a contingent fee contract for one-half the recovery. The client went to his attorney while the appeal was pending and asked him to compromise with defendant. The attorney agreed if the case was reversed he would pay supreme court costs, if the client would give him the interest to accrue and damages for frivolous appeal if it was affirmed. This contract was held valid. The question of there being an agreement to pay costs seemed to be regarded as merely a conditional arrangement that could have been made by any one and certainly it was not an agreement to support the carrying on of litigation. It was said: "While it was made between attorney and client, it could have been made between the client and some other party. It can hardly be said that this contract was to encourage litigation. The client was already in the midst of litigation successfully conducted by the attorney." This case does seem only to have a relative, but not a close, relation to the question involved.

A mere agreement to advance money necessary to carry on litigation "with the express or implied agreement for its repayment and there is no contract of indemnity against the client's liability to pay the costs" is not champertous. Northwestern S. S. Co. v. Cochran, 191 Fed. 146, 111 C. C. A. 626. But this does not go into the question of the speculative feature denounced by the law. See also Potter v. Ajax Min. Co., 22 Utah 273, 61 Pac. 909.

Where there is a mere agreement by an attorney that he will not call on a defendant for expenses during the litigation, and the client unsolicited called on the attorney and engaged him, and the expenses if the litigation was successful could be charged against defendant's interest in land, this was held not champertous. Ransom v. Cutting, 188 N. Y. 447, 81 N. E. 324.

In Wallace v. Railroad, 112 Iowa 565, 84 N. W. 662, a contract provided for a percentage of recovery and to pay the attorneys money advanced in the prosecution, together with their personal expenses. This was held on its face not to be champertous, but it was claimed that the true facts showed it to be champertous. But it was held that they did not so show. The point we have been arguing is here suggested.

We think it has been held that an agreement is not champertous where there is an agreement to pay costs as a loan, but has not been held that such a loan cannot as a mere subterfuge cover a speculative agreement. C.

ITEMS OF PROFESSIONAL INTEREST

PROGRAM FOR THE MEETING OF THE ALABAMA BAR ASSOCIATION.

The thirty-eighth annual meeting of the Alabama Bar Association will be held at Montgomery, July 9th and 10th.

The President's address will be made by Mr. Ray Rushton, and the annual address will be delivered by Hon. Hannis Taylor, of Washing-

ton, D. C., his subject being, "Due Process of Law—Its Past, Present and Future." The following addresses will be made: by Mr. J. T. Denson, on "Doctrine of Comparative Negligence;" by Mr. J. N. Granade, on "Some Imperfect and Mutilated Laws;" by Mr. E. G. Rickarby, on "Some Suggestions as to Practice from Admiralty Procedure;" by Mr. Francis G. Caffey, on "The United States Cotton Futures Act;" by Mr. Walker Percy, on "A Few Needed Reforms in Judicial Procedure;" by Mr. Samuel B. Stern, on "Decisions of Courts of Last Resort Based on Other than Fundamental Principles."

In addition to these papers there will be reports from the following committees: Commitee on Jurisprudence and Law Reform, Chairman, S. S. Pleasants; Judicial Administration and Remedial Procedure, Chairman, E. Perry Thomas; Legal Education and Admission to the Bar, Chairman, W. B. Harrison; Correspondence, Chairman, H. E. Gipson; Legislation, Chairman, Sam Will John; Publication, Chairman, J. A. Carnley; Local Bar Associations, Chairman, Jas. A. Mitchell; Legislative Enactment, Chairman, A. H. Carmichael; Special Committee on Violation of the Code of Ethics and Law, Chairman, B. P. Crum.

PROGRAM OF THE MEETING OF THE KENTUCKY BAR ASSOCIATION.

The annual meeting of the Kentucky Bar Association will be held at Frankfort, July 8th and 9th.

The President's address will be delivereu by Mr. Thomas W. Thomas, of Bowling Green. The annual address will be delivered by Hon. John Bassett Moore, who will take for his subject, "Henry Clay and Pan-Americanism." Other papers will be read and addresses made on the following subjects: by Mr. Samuel M. Wilson, on "The Old Court and the New Court Controversy in Kentucky;" by Mr. Wilbur F. Browder, on 'Lawyers' Fees Historically Treated;" by Mr. Alex G. Barrett, on "Federal Trade Commission;" by Mr. John B. Rodes, on "Some Great Lawyers of Kentucky;" by Hon. Rollin Hurt, on 'Suggestions for the Improvement of the Trial by Jury.'

REPORT OF THE MEETING OF THE ARKANSAS BAR ASSOCIATION.

The Arkansas Bar Association held a very successful and pleasant meeting on June 1st and 2d, at Hotel Goldman, Fort Smith, Arkansas. There were a large number of lawyers from all over the state. Sixty-eight new members were elected. Four of the five judges of the Supreme Court were present. Address of welcome was delivered by Judge Jos. M. Hill, of Fort Smith. It was responded to by Jos. M. Stayton, of Newport, Arkansas. The Association was called to order and presided over by Judge Jacob Trieber, of Little Rock, District Judge of the Eastern District of Arkansas, President of the Association. He read an address upon "The National Employer's Liability Act." Judge Peter W. Meldrim, of Savannah, Ga., President of the American Bar Association, was our guest and delivered an address upon "A Sketch of Cicero." Other papers were read as follows:

Jesse Turner, Van Buren, on "Four Fugitive Cases From the Realm of American Constitutional Law."

Chancellor Chas. D. Frierson, of Jonesboro, on "A Fundamental Difference in Viewpoint Between Law and Equity as Illustrated by Two Maxims."

The meeting was especially enjoyable from a sociable standpoint. The annual banquet was largely attended. The following were elected officers for the Association for the ensuing year:

President—Ira D. Oglesby, of Fort Smith.
Vice President—Jesse Turner, of Van Buren.
Secretary—Roscoe R. Lynn, Little Rock.
Treasurer—J. Merrick Moore, Little Rock.

CORRESPONDENCE.

MURDERER TAKING UNDER WILL OR BY INHERITANCE.

We have read with great interest your article in the Central Law Journal for May 14 on a Murderer taking under Will or by Inheritance. We herewith enclose you copy of a Judgment in connection with same which we think will interest you and which was delivered in our Courts last week.

Yours truly,
RUBINSTEIN-NASH & CO.
Gray's Inn, London.

The opinion referred to in the above letter was delivered by Justice Joyce of the Chancery Div. of the High Court of Justice and the report of the case is taken from the Times (London) and is as follows:

"The defendant, J. F. Houghton, killed his brother Jasper and shortly afterwards killed his father. At the inquest a verdict of mur-

der in respect of both deaths was returned against J. F. Houghton, and he was then indicted for both murders. On the first charge the jury found that he had killed his brother Jasper, but that he was of unsound mind. The second charge, with respect to the death of defendant's father, was not proceeded with.

"The defendant's father died intestate, leaving an estate of about £14,00, composed mainly of the proceeds of policies on the life of Jasper Houghton. In these circumstances this summons was taken out by the intestate's widow asking the Court to decide how the estate of her late husband should be distributed.

"Mr. Justice Joyce said that it was alleged that J. F. Houghton slew his father, but no one saw the deed; and it was doubtful whether there was any evidence before the Court upon which this Court could judicially arrive at the conclusion that J. F. Houghton, who was at all events at the time of his father's death of unsound mind, was guilty of the murder of his father, or of manslaughter. That Court had no jurisdiction to try him.

"The unfortunate victim, the father, died intestate, but one thing was quite certain—namely, that if the indictment against J. F. Houghton for the murder of his father had been proceeded with, and it had been proved that he did in fact slay his father, he would have had to be dealt with under section 2 of the Trial of Lunatics Act, 1883 (46 and 47 Vict., c 38). So that, whatever be precisely the proper form of the verdict to be taken in such circumstances, if he had been found guilty of the act he would not have been found guilty of any offence. In other words, having regard to the decision in Felstead v. Rex (30 The Times Law Reports, 143; [1914] A. C., 534), J. F. Houghton, if actually tried, would have been acquitted of any criminal offence even if found guilty of the act of killing his father. Consequently there appeared to be no reason why he should not have taken any benefit under the will of his father if the deceased had left a will.

"There was still less reason, if possible, why he should not take his proper share under his father's intestacy, the distribution of whose property was regulated by the positive provisions of the statute law."

NOTE.—The distinction pointed out is freely conceded as from the very title of the article to which our correspondent refers, though that phase was not specially discussed in that article. The article discussed the question of forfeiture by the criminal act of the heir under the maximum nullus commodum capere potest de injuria sua—no one shall profit by his own wrong. EDITOR.

HUMOR OF THE LAW

When no case in point can be found, use this: "Case law is fast becoming the great bane of the bench and bar. Our old-time great thinkers and profound reasoners, who conspicuously honored and distinguished our jurisprudence, have been succeeded very largely by an industrious, painstaking, far-searching army of sleuths, of the type of Sherlock Holmes, hunting some precedent in some case, confidently assured that, if the search be long enough and far enough, some apparently parallel case may be found to justify even the most absurd and ridiculous contention." Justice Wanamaker, in State v. Rose, 106 Northeastern Reporter, 50.—The Docket.

A Chinaman was brought before a Magistrate in a court of a Canadian city and received a fine for a slight misdemeanor. The judge had great difficulty in making the Oriental understand, for he pretended not to know a word of English.

"Look here, man," he said disgustedly, "that is $1. Do you see? Pay it—otherwise in jail! Understand?" The Chinaman signified that he did not understand and the Magistrate repeated it.

"Let me talk with him, Your Honor," said the portly officer who had arrested the man. "I'll make him understand!"

When the Judge had given him leave the officer approached the Chinaman and shouted in his ear:

"Soy you, with the teakettle face, can't you hear anything? You've got to pay a $2 fine!"

"You're a liar!" cried the Chinaman, forgetting himself in his rage. "It's only $1."—Youth's Companion.

A student was reciting glibly on the liability of an innkeeper for the property of his guest, and the point directly involved was his liability for personal property when the innkeeper maintained a safe for deposit of valuables. The recitation was progressing nicely, to the entire satisfaction of the instructor and the class as well, when suddenly this sentence beat its way into the semi-consciousness of the victim's fellow sufferers:

"No, sir, it is not essential that one should check wearing apparel at the desk, when registering at a hotel."

Later, when there was quiet, he explained that jewelry was wearing apparel.—Case and Comment.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Accord and Satisfaction**—Estoppel.—Where a new bank assumed payment of the depositors of an old bank, held that the act of a depositor in drawing out a large part of the deposit credited to him on the books of the new bank did not preclude him from questioning the balance shown by such books.—Miles v. Macon County Bank of Macon, Mo., 173 S. W. 713.

2. **Adoption**—Divorce.—A decree of divorce, which awards to wife the custody of a child, does not deprive the husband of its custody, within Civ. Code, §224, relating to adoption, so as to render his consent, on notice of the proceedings unnecessary.—Bell v. Krauss, Cal., 146 Pac. 874.

3. **Adverse Possession**—Mistake in Deed.—The reformation of a deed to correct a mistake therein does not relate back so as to make adverse possession prior to the reformation possession under color of title.—Richmond Cedar Works v. John L. Roper Lumber Co., N. C., 84 S. E. 521.

4. **Affray**—Provocation.—One who by language and conduct induces another to strike him held guilty of an affray.—State v. Lancaster, N. C., 84 S. E. 529.

5. **Animals**—Diseased.—Under Ky. St. §62, an owner of diseased animals was not liable for spreading the contagian by driving them about, unless he knew of the disease, and one suing him thereunder must allege knowledge.—Alfrey v. Shouse, Ky., 173 S. W. 792.

6.——Poisoning.—Failure of a railroad to notify an owner of cattle that it was going to place poison on its right of way held not negligence, where cattle entered because a third person opened a gate.—Alfrey v. Shouse, Tex., 173 S. W. 792.

7. **Assignments for Benefit of Creditors**—Attachment.—A trustee in a preferred deed of trust may not sue for a wrongful attachment, where the creditors did not accept the conveyance.—Goldman v. Spann, Tex., 173 S. W. 1014.

8. **Bankruptcy**—Jurisdiction.—Under Bankr. Act 1898, §5, subd. "c," a bankruptcy court, having jurisdiction over one partner, may take jurisdiction of the firm without reference whether it is six months old, and without a specific allegation as to its principal place of business.—In re Mitchell, U. S. C. C. A., 219 Fed. 690.

9.——Jurisdiction.—A bankruptcy adjudication draws to the court making it the bankrupt's property wherever situated, with full right to administer the estate.—Knauth, Nachod & Kuhne v. Latham & Co., U. S. C. C. A., 219 Fed. 721.

10.——Mechanics' Lien.—Where a bankruptcy court had possession of a bankrupt's estate for a distribution, it had jurisdiction to determine the validity of a mechanics' lien claimed by a creditor on certain of the bankrupt's property.—In re Kligerman, U. S. D. C., 219 Fed. 758.

11.——Mortgage.—A mortgage executed by a bankrupt corporation held not fraudulent as to the mortgagor's creditors as permitting it to sell off the mortgaged property without accounting for the proceeds to the mortgagee.—In re Haywood Wagon Co., U. S. C. C. A., 219 Fed. 655.

12.——Pleadings.—An indictment for perjury assigned on defendant's testimony in a bankruptcy proceeding, that he received $1,500 in currency from the bankrupts, held not objectionable for failure to charge that he did not receive $1,500 or any substantially similar sum.—Ulmer v. United States, U. S. C. C. A., 219 Fed. 641.

13.——Practice.—Where a judgment of the state court against a bankrupt pending bankruptcy proceedings was reversed on an appeal taken after the time within which the bankruptcy court required an order to suspend payment on dividends, the bankrupt's trustee was entitled to recover the dividends paid on such claim.—Nelson v. Heckscher, U. S. C. C. A., 219 Fed. 679.

14.——Subrogation.—Transfer of time checks issued by a bankrupt company to their employes, to claimants for supplies, held not to subrogate claimants to the laborers' lien against the bankrupt's assets.—Bell v. Arledge, U. S. C. C. A., 219 Fed. 675.

15. **Banks and Banking**—Debtor and Creditor.—A bank having paper for collection, in the absence of an agreement to the contrary, becomes owner of the money collected, and on proper credit being given to the holder of the paper the relation of debtor and creditor is created.—First Nat. Bank of Raton v. Dennis, N. M., 146 Pac. 948.

16.——Ultra Vires.—Where a new bank acquired the assets of an old bank in consideration of an agreement to pay its depositors and other creditors, it could not relieve itself from its obligation to pay a depositor by a plea that the contract was ultra vires.—Miles v. Macon County Bank of Macon, Mo., 173 S. W. 713.

17. **Bastards**—Legitimacy.—In bastardy proceedings, testimony of the mother that defend-

ant had intercourse with her and was the father of the child, and that she had a husband living, without more, is insufficient to overcome the presumption of legitimacy.—Kennedy v. State, Ark., 173 S. W. 842.

18. **Bills and Notes**—Accommodation Indorser.—That plaintiff, an accommodation indorser, had procured the assets of the corporation maker of the note, held a good defense and to entitle defendant a like indorser, to demand an accounting as against objection that it was predicated on outside matters.—Broussard v. Mason, Mo., 173 S. W. 698.

19.——Mortgage.—A mortgage being merely an incident to the note which it secures, the assignment of the mortgage cannot affect the negotiability of the note.—Bailey v. Inland Empire Co., Ore., 146 Pac. 991.

20. **Bridges** — Negligence. — An automobile driver, driving his car at night at about 25 miles per hour, held not contributorily negligent, where he missed a bridge, the approach to which had no guard rails, and was precipitated over the banks of the stream and killed.—Abbott v. Board of County Commissioners, Kan., 146 Pac. 998.

21. **Brokers**—Compensation.—An agent employed to procure a purchaser held not to have earned commissions where he did not bring the owner and the purchaser together nor acquaint the owner of the fact that the purchaser desired to purchase.—Raymer v. Hobbs, Cal., 146 Pac. 906.

22.——Contract.—A contract giving brokers the exclusive sale of the coal company's output of coke, so long as their services were satisfactory and they demonstrated their ability, could be terminated by either party by notice.—Elkhorn Consol. Coal & Coke Co., v. Eaton, Rhodes & Co., Ky., 173 S. W. 798.

23. **Cancellation of Instruments**—Venue.—A creditor may sue his debtor in the county of the latter's residence, and in the same action have cancellation of the debtor's fraudulent deed, though the debtor's grantee, also a party to the action, resides in another county.—Fourth Nat. Bank of Columbus v. Mooty, Ga., 84 S. E. 546.

24. **Carriers of Goods**—Limitation of Liability.—In the absence of statute, a common carrier of goods cannot limit its liability for loss or destruction by its own negligence of goods carried, when such limitation is much below the real worth of the property.—Louisville & N. R. Co. v. Jones, Ala., 67 So. 621.

25.——Pleadings.—Where goods consigned to different buyers from the same seller were loaded in one car and destroyed by fire, the buyers had rights of action against the carrier, and the seller could not sue.—Alabama Great Southern R. Co. v. H. Altman & Co., Ala. 67 So. 589.

26.——Rates.—Where interstate railroad carriers furnish lighters free to shippers to transfer freight to ocean carriers, the railroads, by inserting a charge in their published tariffs against steamship companies for detention of such lighters, did not render the latter liable therefor.—Central R. Co. of New Jersey v. Anchor Line, U. S. C. C. A., 219 Fed. 716.

27. **Carriers of Passengers**—Relation.—Where a passenger was resting in a car under the conductor's directions while the train was delayed by a wreck, he continued to be a passenger entitled to reasonable protection from unlawful assaults or imprisonment at the hands of the railway company's employes.—Turk v. Norfolk & W. Ry. Co., W. Va., 84 S. E. 569.

28. **Commerce**—Employers' Liability Act.—The Federal Employers' Liability Act controls, to the exclusion of state regulation, recovery for the death of an employe of a railroad engaged in interstate commerce at the time he was killed.—McGarvey's Guardian v. McGarvey's Adm'r, Ky., 173 S. W. 765.

29. **Constitutional Law**—Discrimination. — A condition in a deed that the grantee shall not sell to a negro does not violate Const. U. S. Amend. 14; the provision against discrimination not applying to individual contracts.—Queensborough Land Co. v. Cazeaux, La., 67 So. 641.

30.——Due Process of Law.—That neither the statute nor ordinance provided for notice did not make an assessment a taking of property without due process, where the assessment could be enforced only by filing of notice of lien and foreclosure as mortgages are foreclosed.—City of Roswell v. Bateman, N. M., 146 Pac. 950.

31.——Rates.—Laws 1907, p. 711, authorizing the railroad commission to change rates for carriage of freight and passengers, is not repugnant to the Constitution as an unauthorized delegation of legislative power.—Kibtrel v. Louisville & N. R. Co., Ala., 67 So. 586.

32.——Social Clubs.—Laws 1914, c. 127, §4, prohibiting the carrying of intoxicating liquor into social clubs, does not deprive the members of such clubs of the equal protection of the laws.—State v. Phillips, Miss., 67 So. 651.

33. **Contracts**—Duress.—Conveyance of property to secure the release of a person imprisoned under a warrant issued principally to enforce collection of a debt held void.—Jordan v. Beecher, Ga., 84 S. E. 549.

34.——Pleading.—The complaint in an action on a contract requiring performance by plaintiff within a stipulated period, alleging performance before suit brought after the stipulated period, does not allege performance within the stipulated period.—McCormick v. Badham, Ala., 67 So. 609.

35.——Third Person.—Under a contract obligating a bank to pay the deposits and liabilities of another bank whose assets it took over, held that it became liable to pay the debt due a depositor, but not shown in an exhibit attached to the contract.—Miles v. Macon County Bank of Macon, Mo., 173 S. W. 713.

36. **Corporations** — Contract. — A buyer of stock, who surrendered his right to a transfer on the price being paid from dividends on the seller agreeing to sell and account, held entitled to enforce the promise, unless consenting to a rescission of a sale by the seller.—McCormick v. Badham, Ala., 67 So. 609.

37.——Receiver.—A receiver should not be appointed for a solvent going corporation, at the suit for a minority stockholder, unless plaintiff's right is free from reasonable doubt, and the danger of loss or injury is fairly proven.—Inscho v. Mid-Continent Development Co., Kan., 146 Pac. 1014.

38.——Trustee.—An officer of a corporation, who procured its assets at a depreciated price,

through sales in receivership proceedings which he controlled, became a trustee of the assets for the benefit of all persons interested therein. —Broussard v. Mason, Mo., 173 S. W. 698.

39. **Criminal Law**—Jurisdiction.—A captain of a ship who assaulted a member of his crew on the high seas, and brought the ship to her pier in the borough of Brooklyn, Eastern district of New York, was not subject to prosecution in the Southern district of New York, under Judicial Code.—United States v. Townsend, U. S. D. C., 219 Fed. 761.

40. **Damages**—Evidence.—Where, in an action for breach of contract to purchase medallions, plaintiff showed the probable number defendant would have purchased, defendenat was entitled to show the number it actualy purchased elsewhere.—Bry Block Mercantile Co. v. Columbia Portrait Co., U. S. C. C. A., 219 Fed. 710.

41.——Measure of.—Where plaintiff was using his land for pasturage and hay, the measure of damages for burning the grass was the depreciation in its market value for that or any lawful purpose.—St. Louis Southwestern Ry. Co. of Texas v. Anderson, Tex. 173 S. W. 908.

42.——Mitigation.—That plaintiff was predisposed to tuberculosis, so that her injuries resulting from a sprain were greater than might be reasonably expected, affords neither defense nor mitigation of damages. — Thomas v. St. Louis, I. M. & S. Ry. Co., Mo., 173 S. W. 728.

43.——Rent Lost.—Lessee prevented from opening for business by plaintiff's failure to install fixtures, not buying fixtures elsewhere, held not entitled to hold plaintiff for all rent lost.—Bishop-Babcock-Becker Co. v. Levinson, Ark., 173 S. W. 833.

44. **Death**—Dependency.—A child of the deceased railroad employe, who was not dependent on the employe and had no reasonable expectation of pecuniary benefits from him, cannot participate in a recovery for his death under the Federal Employers' Liability Act.—McGarvey's Guardian v. McGarvey's Adm'r, Ky., 173 S. W. 765.

45. **Deeds**—Condition Subsequent.—A condition in a deed that the grantee shall not sell to a negro held a condition subsequent the accomplishment of which has the effect of restoring matters to the situation in which they were before the contract was entered into (Rev. Civ. Code, §2045).—Queensborough Land Co. v. Cazeaux, La., 67 So. 641.

46.——Description.—Where a deed in plaintiff's chain of title, conveying a rectangular piece of land, gave three sides and the number of acres in the tract, but omitted the closing call, the defect was not such as to render plaintiff's title unmarketable.—Barnum v. Lockhart, Ore., 146 Pac. 975.

47.——Natural Heirs.—The term "natural heirs," in a deed to one and to her natural heirs, is not to be constructed as meaning heirs generally, but as heirs of the body.—Maynard v. Henderson, Ark., 173 S. W. 831.

48. **Descent and Distribution**—Vested Remainder.—Where a will creates a vested remainder in the life tenant's children living at testator's death, and such a child dies before the life tenant, leaving children, such children take by descent the share of their deceased parent.—Green v. Driver, Ga., 84 S. E. 552.

49. **Disorderly House**—Defense.—In a prosecution, under P. C. art. 500, for permitting the keeping of a disorderly house, held that defendant's efforts to have the premises vacated were too late to save him from prosecution.—Davidson v. State, Tex., 173 S. W. 1037.

50. **Divorce**—Fraud.—Where there was no fraud, the state, entitled to be made a party in divorce to prevent fraud, was not entitled to appeal on the ground that the decree was void on its face, since it had no interest in the proceeding.—Orr. v. Orr., Ore., 146 Pac. 964.

51. **Equity**—Abuse of Discretion.—In action against executor, legatee, and trustee, to enforce liability as stockholder of insolvent national bank, brought on the theory that he was liable as legatee, denial of leave to amend bill held not an abuse of discretion.—Williams v. Cobb, U. S. C. C. A., 219 Fed. 663.

52. **Estoppel**—Permissive Use.—Under Laws 1895, p. 341, and Laws 1899, p. 39, authorizing a county to build a wharf and operate a ferry, permissive use of the wharf by another ferry company could not ripen into an estoppel against the county.—Anderson Steamboat Co. v. King County, Wash., 146 P. 855.

53.——Unrecorded Deed.—Plaintiff, who sold land to defendant, and who delivered his own unrecorded deed to his grantor, who conveyed direct to defendant, held estopped to recover the land on the ground that the sale was by parol and void.—Rowe v. Epling, Ky., 173 S. W. 801.

54. **Explosives**—Proximate Cause.—A landlord, placing explosives in the loft of a toolhouse used by his tenant, though not within the tenant's inclosure, held not liable for injuries to a child of the tenant discovering the explosives.—Miller v. Chandler, Ky., 173 S. W. 779.

55. **Food**—Indictment and Information.—An information charging that defendant kept, offered for sale, and sold milk containing less than the standard prescribed by the state board, in violation of the board's regulations and of the statute, states an offense under the Drugs and Foods Act, §3.—State v. Meyer, Kan., 146 Pac. 1007.

56. **Forgery**—Instructions. — Where defendant was on trial under an indictment charging a violation of Pen. Code 1910, §§ 231, 232, held error to instruct that any person who utters or publishes as true a forged receipt is guilty of an offense, without also instucting that defendant must have intended to injure someone.—Raper v. State, Ga., 84 S. E. 560.

57. **Fraud**—Misrepresentation. — Where improvements made by the sellers and purchasers of a corporation's entire capital stock exceeded the amount unpaid on the stock, purchasers cannot recover damages for misrepresentations that it was fully paid in, the value of the improvements having been credited.—Vick v. Park, Tex., 173 S. W. 989.

58. **Frauds, Statute of**—Performance Within One Year.—Code 1907, §4289, subd. 1, requiring agreement not to be performed within one year to be in writing, stating consideration, etc., held applicable to both unilateral and bilateral agreements, so that a plaintiff to hold a defendant liable for breach must show agreement evidenced by such writing.—Rains v. Patton, Ala., 67 So. 600.

59. **Homicide** — Evidence. — Where accused claimed he was rendered insane by a drink of whisky containing cocaine, evidence that deceased some time previously put a drug in whisky is inadmissible.—Maddox v. State, Tex., 173 S. W. 1026.

60.——Instructions.—Where there is any evidence from which the jury might infer accused was guilty of a lesser offense than murder in the first degree, the court should charge on that degree of the offense.—King v. State, Ark., 173 S. W. 852.

61.——Manslaughter.—Passion which in law rebuts the imputation of malice and reduces the crime to manslaughter need not be so overpowering as for the time to shut out all knowledge and wholly destroy volition.—State v. Kennedy, N. C., 84 S. E. 515.

62.——Protection of Others.—The right to interfere for the protection of others to the extent of taking life when necessary includes such persons as master and servant, parent and child, guardian and ward, and uncle and nephew.—Forman v. State, Ala., 67 So. 583.

63. **Husband and Wife**—Antenuptial Contract. Antenuptial contracts will be sustained, unless procured by fraud or influence giving an unfair advantage over the wife, and where they limit her to much less than the law would give her, will be set aside.—Raines v. Gaines' Adm'r, Ky., 173 S. W. 774.

64.——Curtesy.—Husband held unable to sue alone in equity on the strength of an estate of curtesy initiate to recover possession and rents of his wife's realty previously conveyed by her. —Bryant v. Freeman, Tenn., 173 S. W. 863.

65.——Liability of Wife.—A married woman held personally liable for groceries furnished

and charged to her pursuant to agreement, though her husband was under legal obligation to procure such groceries.—Bell v. Rosingnol, Ga., 84 S. E. 542.

66.——Specific Enforcement.—That a married woman's contract cannot be specifically enforced held not to render it void, so that return of money paid to her upon it could not be enforced, and a lien declared on her property therefor.—Vance v. Jacksonville Realty & Mortgage Co., Fla., 67 So. 636.

67. **Injunction**—Bridges.—Whether the duty of keeping a bridge in repair rested on the county or city could not be determined, in the absence of the county as a party, in a suit to enjoin the county commissioners from maintaining the bridge.—Ennis v. Pollock, Ga., 84 S. E. 539.

68.——Union Labor.—Where members of labor union served with process did not participate in scheme to unionize plaintiff's plant sought to be enjoined, held, that there was no common or general interest authorizing an injunction against them or bringing defendants not served before the court by representation.—Hill v. Eagle Glass & Mfg. Co., U. S. C. C. A., 219 F. 719.

69. **Insurance**—Benefit Society.—A beneficiary in a mutual benefit insurance certificate has a right to the proceeds unless the member changes the designated beneficiary in the manner proscribed by the certificate.—Sovereign Camp, Woodmen of the World, v. Israel, Ark., 173 S. W. 855.

70.——Sole Ownership.—Notwithstanding provision invalidating policy if interest of insured was other than sole ownership, ownership jointly with other members of family, or husband's interest in household furniture, etc., held not to invalidate the policy.—North River Ins. Co. v. Dyche, Ky., 173 S. W. 784.

71. **Intoxicating Liquors**—Interstate Commerce.—Prosecution for illegally transporting liquor into local option territory could not stand where the shipment was proved to have been made in interstate commerce, and there was no evidence that it was intended to be used in violation of the laws of the state of destination.—Adams Express Co. v. Commonwealth, Ky., 173 A. W. 764.

72.——Ordinance.—An ordinance prohibiting the sale of enumerated liquors, including alcohol, is violated by sale of alcohol as a beverage, however diluted or disguised.—Feagin v. City of Andalusia, Ala., 67 So. 630.

73. **Joint Adventures**—Termination.—A joint adventure cannot be terminated as to a member, even if a valid reason exists for so doing, unless notice is given him.—Saunders V. McDonough, Ala., 67 So. 591.

74. **Landlord and Tenant**—Rent Reserved.—Where rent is reserved for a year, or is payable yearly, or every year, a tenancy for years is agreed on, and the tenant is entitled to a lease for at least two years.—Faucett v. Northern Clay Co., Wash., 146 P. 857.

75. **Libel and Slander**—Malice.—A publisher of a city directory may, when sued for libel because stating in the directory that a white woman is colored, show that the statement was made by mistake, and the error corrected when discovered, to rebut malice.—Jones v. R. L. Polk & Co., Ala., 67 So. 577.

76. **Liens**—Acquisition Of.—A lien on land is acquired by one who lends money for its purchase, under a promise that he is to receive a mortgage, and in the meantime is given the undelivered deed to hold as security.—Warren Mortgage Co. v. Winters, Kan., 146 P. 1012.

77. **Limitations of Actions**—Administration.—Where no administrator had been appointed for a deceased debtor, and the creditor's right to sue depended on demand, he was entitled to a reasonable time to have an administrator appointed and to make the demand, which time would coincide with the period of limitations.—Sullivan V. Ellis, U. S. C. C. A., 219 F. 694.

78. **Mandamus**—Adequate Remedy.—Mandamus will not issue to compel a county superintendent to honor a claim by the trustees of a school district of another county for the support of a joint school, since there is an adequate remedy by appeal to the state board of education.—Rouse v. Benton, S. C., 84 S. E. 533.

79. **Master and Servant**—Assumption of Risk.—A switchman, choosing the more dangerous of two methods, where the automatic coupler was defective, did not as matter of law, assume the risk.—St. Louis Southwestern Ry. Co. v. Anderson, Ark., 173 S. W. 834.

80.——Assumption of Risk.—Under Employers' Liability Act, amending Code 1896, § 1749, assumption of risk in remaining in the employment after knowledge of a dangerous condition cannot be pleaded in bar of a recovery.—Standard Portland Cement Co. v. Thompson, Ala., 67 So. 608.

81. **Master and Servant**—Election.—Where an employer has elected not to accept the Workmen's Compensation Act, the employe, notwithstanding his own acceptance, may sue under the Factory Act.—Smith v. Western States Portland Cement Co., Kan., 146 P. 1026.

82.——Fellow Servant.—Where a servant is injured from another servant's use of a defective appliance susceptible of simple remedy by the servants themselves, the legal cause of the injury is the fellow servant's act.—Martin v. Carter Coal Co., W. Va., 84 E. 574.

83.——Guarding Machinery.—A mill of substantial dimensions and running 16 months after an accident to an employe caught by a set screw held not a mere temporary structure, but within Rev. St. 1909, § 7828, requiring the guarding of shafting.—Sanders v. Quercus Lumber Co., Mo., 173 S. W. 740.

84.——Inexperience.—Where slate in a coal mine could have been removed before an inexperienced miner was set at work, the operator could not escape liability for injury because the danger was caused by the progress of the work.—Interstate Coal Co. v. Garrard, Ky., 173 S. W. 767.

85.——Pleading.—A complaint for injuries to an employe on a girder of a gas tank in process of construction, caused by the fall of a gin pole negligently maintained and operated, states a cause of action under Employers' Liability Act.—Lang v. Camden Iron Works, Ore., 146 Pac. 964.

86.——Proximate Cause.—The negligence of a railroad foreman in permitting dynamite to be left in a bucket of pitch held the proximate cause of injuries to a laborer by an explosion caused by the use of the bucket as a receptacle for burning rags.—Cincinnati, N. O. & T. P. Ry. Co. v. Padgett, Ky., 173 S. W. 780.

87. **Mechanics' Liens**—Husband and Wife.—Where husband and wife are owners by the entirety, the wife need not join in a contract for a building in order that a mechanic's lien may attach to the husband's interest.—C. A. Brockett Cement Co. v. Logan, Mo., 173 S. W. 727.

88. **Monopolies**—Trading Stamps.—Act Cong. October 15, 1914, § 3, prohibiting price fixing contracts on condition that the purchaser shall not deal in the merchandise of a competitor, did not prevent a trading stamp concern from limiting the redemption privilege to subscribers.—Sperry & Hutchinson Co. v. Fenster, U. S. D. C., 219, Fed. 755.

89. **Municipal Corporations**—Damages.—A municipality held not liable for personal injuries from stepping into a hole cut in the floor by firemen who responded to an alarm sent in by plaintiff's daughter, even though the firemen were negligent.—Rogers v. City of Atlanta, Ga., 84; S. E. 555.

90.——Defect in Street.—Whether it was negligence for woman with knowledge of defect in the street to forget it when bitten by a dog held a question for the jury.—City of Ludlow v. Stetson, Ky., 173 S. W. 806.

91.——Fire Limits.—An ordinance establishing fire limits within which it shall be unlawful to erect, except by permission, wooden buildings, is void because not applicable to all alike.—Hays v. City of Poplar Bluff, Mo., 173 S. W. 676.

92.——Ordinance.—An ordinance passed pursuant to statute is not invalid merely because it would be unreasonable if passed under the in-

cidental power of the corporation, or under a grant of power general in nature.—City of Roswell v. Bateman, N. M., 146 Pac. 950.

93.——Proximate Cause.—Merely because conduct of defendant's horse, which, while being driven by him, backed into plaintiff's automobile, was the result of its inherent nature, defendant was not relieved of liability.—Wells Fargo & Co. Express v. Keeler, Tex., 173 S. W. 926.

94. **Officer**—Estoppel.—An appointee to an office was not estopped from claiming title to the office under his appointment by the fact that he entered into a contest for the office with opponents at the next general election.—State v. Lentz, Mont., 146 Pac. 932.

95. **Partnership**—Joint Adventure.—While a partnership is ordinarily formed for the transaction of a general business of a particular kind, a joint adventure relates to a single transaction. —Saunders v. McDonough, Ala., 67 So. 591.

96. **Principal and Surety**—Assumption Of Debt.—Where a new bank assumed payment of the depositors of an old bank, the new bank became the principal debtor as to depositors, and the old bank became the surety for it.—Miles v. Macon County Bank of Macon, Mo., 173 S. W. 713.

97. **Public Lands**—Quitclaim Deed.—A confirmation by the Court of Private Land Claims held not to affect any conflicting private interests held adversely, but to operate only as a quitclaim deed or release of all claims of title by the United States.—Board of Trustees of Cebilleta de La Joya Grant v. Board of Trustees of Belen Land Grant, N. M., 146 Pac. 959.

98. **Railroads**—Attorney Fee.—Where the owner of the animal killed through violation of the statute requiring the right of way to be fenced is compelled to sue, he is entitled to a reasonable attorney's fee, though the jury fixed the value of the animal at less than claimed by plaintiff.—Atlantic Coast Line R. Co. v. Perry, Fla., 67 So. 639.

99.——Burden of Proof.—Plaintiff, suing for the death of a person killed on a railroad track in Virginia, held under Virginia laws to have the burden of proving that the engineer saw the deceased on the track.—Harrison v. Atlantic Coast Line R. Co., N. C., 84 S. E. 519.

100.——Disobedience of Orders.—In action for brakeman's death in collision with defendant's train, fact that defendant's conductor incorrectly read his watch and ran his train in violation of orders rendered defendant liable, if death proximately resulted therefrom.—Southern Ry. Co. v. Harrison, Ala., 67 So. 597.

101.——Passengers.—Rev. St. 1911, art. 6592, relative to water-closets at railway stations, held not to apply to stopping place for trains where no building for passengers or freight was maintained.—State v. Texas & P. Ry. Co., Tex., 173 S. W. 900.

102.——Presumption of Care.—A presumption that decedent, killed while crossing tracks at a much used path, was in the exercise of due care could not arise until it was shown that he was crossing at that point.—Atchison, T. & S. F. Ry. Co. v. De Sedillo, U. S. C. C. A. 219 Fed. 686.

103.——Proximate Cause.—Negligence of one in jumping from a moving train and falling injured on a track is not the proximate cause of his death by being run over by an engine while lying on the track.—St. Louis Southwestern Ry. Co. of Texas v. Watts, Tex., 173 S. W. 909.

104. **Receivers**—Expenses.—Where receivership expenses were paid from partnership funds equally owned by the parties, upon annulment of the receivership order, the party procuring the receivership held required to pay only one-half the receivership expenses.—Taintor v. St. John, Mont., 146 Pac. 939.

105. **Reformation of Instruments**—Equity.—Where a grantee bargained for land actually conveyed by the grantor and acted in good faith and was not responsible for an error of the grantor who possessed capacity, equity would not reform the deed at the suit of the grantor. —Forrester v. Moon, S. C., 84 S. E. 532.

106. **Street Railroads**—Mortgage.—A street railroad mortgage covering after-acquired property and franchises held to cover a subsequent franchise granted by the city authorizing the railroad company to furnish electricity for power as against the city.—Old Colony Trust Co. v. City of Tacoma, U. S. D. C. 219 Fed. 775.

107. **Trade Unions**—Joint Tortfeason.—Members of labor union held not liable for tort of other members, unless they authorized or participated in it, or aided it in some way with knowledge of the illegal purpose.—Hill v. Eagle Glass & Mfg. Co., U. S. C. C. A. 219 Fed. 719.

108. **Trespass**—Statute of Limitations.—The record owner of land who did not pay taxes for some years, during which time defendant paid them, held not barred from recovering for defendant's cutting of timber; the period of limitation not having run.—Dunavant v. Pemiscot Land & Cooperage Co., Mo., 173 S. W. 747.

109. **Trover and Conversion**—Standing Timber.—The measure of damages for the conversion of standing timber is the value of the timber at the time and place of the conversion; but, if done in bad faith, the enhanced value of the timber may also be recovered.—Bradley Lumber Co. v. Hamilton, Ark., 172 S. W. 848.

110. **Trusts**—Creation Of.—A testator may create a trust estate for the life of the beneficiary, with provision that the latter shall enjoy the income as either fixed by the instrument or in the trustee's discretion, and that such income shall not be subject to alienation or liability for the beneficiary's debts.—Sherman v. Havens, Kan., 146 Pac. 1030.

111.——Implied.—The relation between adverse claimants to land will not raise for the true owner's benefit an implied trust in the price of timber sold by the claimant in possession, though he took title pending ejectment by which the true owner's title was established.—W. M. Ritter Lumber Co. v. Lowe, W. Va., 84 S. E. 566.

112.——Will.—A will directing executors to invest a trust fund in "interest-bearing securities" did not authorize the investment thereof in the stock of a national bank.—Williams v. Cobb, U. S. C. C. A. 219 Fed. 663.

113. **Vendor and Purchaser**—Reservation of Lien.—The vendor of land with a reservation of lien to secure purchase money holds the legal title thereto, and may pass the purchasers' equitable title, with the latter's consent, by conveyance of his own legal title.—O'Neal v. Bush & Tillar, Tex., 173 S. W. 869.

114.——Tender.—Where vendors in a contract for sale of land notified the purchasers that they would not perform, the duty of the purchasers to tender performance of conditions precedent or concurrent conditions is waived.—Saunders v. McDonough, Ala., 67 So. 591.

115. **Waters and Water Courses**—Public Utility.—A water company operating under contract ordinance is a quasi public corporation, and must exercise privileges subject to obligation to supply water without unjust discrimination and at uniform rates to all on its lines who apply and tender reasonable compensation.—Birmingham Water Works v. Brown, Ala., 67 So. 613.

116. **Wills**—Requisites Of.—The courts cannot dispense with the statutory requisites to the making of wills, but in determining what are requisites under the act regard should be had to the purpose and spirit of the statute, rather than to the rigid reading of the words used by the Legislature.—In re Cullberg's Estate, Cal., 146 Pac. 888.

117.——Vested Remainder.—A devise to one for life, and, at his death, to his children, in the absence of an apparent contrary intent, creates a vested remainder in the life tenant's children living at testator's death.—Green v. Driver, Ga., S. E. 552.

118. **Work and Labor**—Gratuitous Services —That a corporation which took over the business of a firm which had rendered gratuitous services continued to render them without any change in business must be considered in determining the existence of an implied contract to pay.—Gulf & S. I. R. Co. v. Magee Warehouse Co., Miss., 67 So. 648.